

FCC MAIL SECTION

Federal Communications Commission

DA 97-2169

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DISPATCHED BY Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Wilson and Turrell, Arkansas)

MM Docket No. 97-215
RM-9168

NOTICE OF PROPOSED RULE MAKING

Adopted: October 1, 1997

Released: October 10, 1997

Comment Date: December 1, 1997

Reply Comment Date: December 16, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein an amended and restated petition for rule making,¹ as well as supplements thereto, filed on behalf of Pollack Broadcasting Company ("petitioner"), permittee of Station KAFW(FM), Wilson, Arkansas, seeking the reallocation of Channel 234A from Wilson² to Turrell, Arkansas, as the latter community's first local aural transmission service, and modification of its authorization accordingly. Petitioner stated its commitment to effectuate the changes reflected in its proposal.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of the proposal petitioner states that the requested reallocation

¹Petitioner advises that its amended and restated petition supersedes its request filed December 6, 1995, with regard to Turrell and Wilson. Although the amended petition was returned by letter from the Chief of the Allocations Branch on May 23, 1996, petitioner filed a petition for reconsideration of that action. As a result of changed circumstances surrounding the petitioner's earlier-filed request for rule making, we now consider the amended proposal. Therefore, the basis for the pending petition for reconsideration of our earlier dismissal of petitioner's request has been rendered moot by the action proposed herein, and the reconsideration request will be dismissed at the conclusion of this proceeding.

²Although petitioner has a construction permit for Station KAFW(FM) on Channel 279A at Wilson (File No. BPH-921023JV), Channel 234A was substituted for Channel 279A in the context of MM Docket No. 93-259. *See Earle, Pochantas and Wilson, Arkansas; and Como and New Albany, Mississippi*, 10 FCC Rcd 8270 (1995). The Table of Allotments has been amended accordingly. *See* 47 CFR 73.202(b).

of Channel 234A to the incorporated community of Turrell (population 988),³ which is not within nor near an Urbanized Area, is mutually exclusive with the existing allotment of Channel 234A at Wilson⁴ (population 1,068). The distance between Wilson and Turrell is 15.4 kilometers (9.5 miles), whereas a distance of 115 kilometers (71 miles) is required in this instance.⁵

3. In further support, petitioner advises that Turrell is an incorporated municipality with an elected mayor. Additionally, petitioner reports that Turrell possesses its own police and water departments, commercial activity and religious affiliations. Although Wilson and Turrell are approximate in size, petitioner asserts that the reallocation of Channel 234A to Turrell will enable it to provide service to 87,700 people, representing a three-fold increase over the population that would be served if potential Station KAFW(FM) remained in Wilson. Further, petitioner remarks that as Station KAFW(FM) is an unbuilt facility, no loss of existing service will result to Wilson from its reallocation proposal. Petitioner concludes that its proposal will result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992),⁶ as the reallocation would provide Turrell with its first local aural transmission service (priority 3), whereas the retention of Channel 234A in Wilson would result in the latter community retaining one FM and one AM station (priority 4).⁷

4. In consideration of the foregoing, we will propose to reallocate Channel 234A from Wilson to Turrell, Arkansas, and modify the authorization for Station KAFW(FM) accordingly, since it would provide a first local aural transmission service to Turrell, and would enable Station KAFW(FM) to increase its potential service area. Moreover, Wilson will continue to receive local aural transmission service from full-time AM Station KOSE.

5. The petitioner's modification request at Turrell conforms with the provisions of Section 1.420(i) of the Commission's Rules. Therefore, we shall propose to modify the authorization for Station KAFW(FM) without entertaining competing expressions of interest in the use of Channel 234A at Wilson, or requiring the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

³Population figures reported herein were taken from the 1990 U.S. Census.

⁴Coordinates for Channel 234A at Wilson are 35-29-46 and 90-10-04.

⁵Coordinates at the petitioner's specified transmitter site at Turrell are 35-22-36 and 90-15-12.

⁶The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)).

⁷Petitioner reports that Newport Broadcasting Company, licensee of Station KOSE(AM) (formerly licensed to the petitioner herein) recently filed an application for a license to cover the outstanding construction permit (File No. BP-960223AB) to change the community of license of Station KOSE(AM) from Osceola to Wilson, Arkansas. We note that a license to cover the construction permit issued to Station KOSE(AM) was recently granted (File No. BL-970509AC). Therefore, Wilson will not be devoid of local service as a result of the instant proposal.

6. A staff engineering analysis confirms that Channel 234A can be allotted to Turrell, at the petitioner's specified site consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, using city reference coordinates 35-22-36 and 90-15-12.

7. In view of the above, we seek comments on the proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Turrell, Arkansas	--	234A
Wilson, Arkansas	234A	--

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before December 1, 1997, and reply comments on or before December 16, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has

been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.